

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: Massachusetts

TRANSFER OF ASSETS

1917(c) The agency provides for the denial of certain Medicaid services by reason of disposal of assets for less than fair market value.

1. Institutionalized individuals may be denied certain Medicaid services upon disposing of assets for less than fair market value on or after the look-back date.

The agency withholds payment to institutionalized individuals for the following services:

- X Payments based on a level of care in a nursing facility;
- X Payments based on a nursing facility level of care in a medical institution;
- X Home and community-based services under a 1915 waiver.

2. Non-institutionalized individuals:

— The agency applies these provisions to the following non-institutionalized eligibility groups. These groups can be no more restrictive than those set forth in section 1905(a) of the Social Security Act:

The agency withholds payment to non-institutionalized individuals for the following services:

Home health services (section 1905(a)(7));

Home and community care for functionally disabled and elderly adults (section 1905(a)(22));

Personal care services furnished to individuals who are not inpatients in certain medical institutions, as recognized under agency law and specified in section 1905(a)(24).

— The following other long-term care services for which medical assistance is otherwise under the agency plan:

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3. Penalty Date--The beginning date of each penalty period imposed for an uncompensated transfer of assets is:
- X the first day of the month in which the asset was transferred;
- the first day of the month following the month of transfer.
4. Penalty Period - Institutionalized Individuals--
In determining the penalty for an institutionalized individual, the agency uses:
- X the average monthly cost to a private patient of nursing facility services in the ~~agency~~ Commonwealth.
- the average monthly cost to a private patient of nursing facility services in the community in which the individual is institutionalized.
5. Penalty Period - Non-institutionalized Individuals--
The agency imposes a penalty period determined by using the same method as is used for an institutionalized individual, including the use of the average monthly cost of nursing facility services;
- imposes a shorter penalty period than would be imposed for institutionalized individuals, as outlined below:
- X N/A
Does not impose a penalty period.

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6. Penalty period for amounts of transfer less than cost of nursing facility care--
- a. Where the amount of the transfer is less than the monthly cost of nursing facility care, the agency:
- ___ does not impose a penalty;
- X imposes a penalty for less than a full month, based on the proportion of the agency's private nursing facility rate that was transferred.
- b. Where an individual makes a series of transfers, each less than the private nursing facility rate for a month, the agency:
- ___ does not impose a penalty;
- X imposes a series of penalties, each for less than a full month.
7. Transfers made so that penalty periods would overlap--
The agency:
- X totals the value of all assets transferred to produce a single penalty period;
- ___ calculates the individual penalty periods and imposes them sequentially.
8. Transfers made so that penalty periods would not overlap--
The agency:
- X assigns each transfer its own penalty period;
- ___ uses the method outlined below:

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9. Penalty periods - transfer by a spouse that results in a penalty period for the individual--

- (a) The agency apportions any existing penalty period between the spouses using the method outlined below, provided the spouse is eligible for Medicaid. A penalty can be assessed against the spouse, and some portion of the penalty against the individual remains.

When a transfer by an individual's spouse results in a period of ineligibility for the individual, and the spouse later becomes institutionalized and applies for medical assistance, the remaining period of ineligibility shall remain with the individual. If both spouses are institutionalized on the same date, the amount of the penalty period is divided equally between them.

- (b) If one spouse is no longer subject to a penalty, the remaining penalty period must be served by the remaining spouse.

10. Treatment of income as an asset--

When income has been transferred as a lump sum, the agency will calculate the penalty period on the lump sum value.

- X The agency will impose partial month penalty periods.

When a stream of income or the right to a stream of income has been transferred, the agency will impose a penalty period for each income payment.

- X For transfers of individual income payments, the agency will impose partial month penalty periods.

- X For transfers of the right to an income stream, the agency will use the actuarial value of all payments transferred.

 The agency uses an alternate method to calculate penalty periods, as described below:

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11. Imposition of a penalty would work an undue hardship--
 The agency does not apply the transfer of assets provisions in any case in which the agency determines that such an application would work an undue hardship. The agency will use the following procedures in making undue hardship determinations:
1. Applicants may submit a hardship request as stated in 106 CMR 505.125 (e).
 2. All hardship requests are forwarded from the field to the Director of eligibility at Central for review and decision (per internal memorandum dated July 28,
 3. The Director of eligibility at Central reviews all requests and renders a decision within 30 days.
 4. In the event a request is denied, the denial letter informs the applicant that the decision may be appealed to the Board of Hearings within 30 days.

The following criteria will be used to determine whether the agency will not count assets transferred because the penalty would work an undue hardship:

The period of ineligibility or a portion of such period may be waived if the following circumstances exist:

1. The individual verifies that all attempts to retrieve the transferred resource have been exhausted, and the recipient of the transfer is unable or unwilling to return the resource or provide adequate compensation to the individual; and
2. denial of medical assistance would deprive the individual of medical care such that his or her health or life would be endangered, or the individual would be deprived of food, shelter, clothing or other necessities such that he or she would be at risk of serious deprivation;
3. the institution has initiated a discharge of the individual because the individual is not able to pay for his or her institutionalization; and
4. there is no less costly noninstitutional alternative available

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